

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CASE NO. 18-53464-bem
DARNELL RICHARDSON, Debtor.	:	JUDGE: Barbara Ellis-Monro
STEPHEN E. AUSTIN and JSK ENTERPRISES,	:	
Movants,	:	
v.	:	
DARNELL RICHARDSON, KYLE A. COOPER, Trustee,	:	
Respondents.	:	

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

COME NOW Movants named above and show this Court the following:

1.

This Motion is made pursuant to Section 362(d) of the Bankruptcy Code for relief from the automatic stay for all purposes allowed by law and the contract between the parties, including, but not limited to, the right to repossess certain real property under a lease.

2.

Movants are the holders and lessors of real property in which the Debtor has a month-to-month leasehold interest. Said real property is commonly known as 6657 Bankhead Highway, Douglasville, Georgia 30134.

3.

On or about February 4, 2018, Movants sent to Debtor a Notice of Termination of the month-to-month lease of the property known as 6657 Bankhead Highway. A copy of the Notice of Termination is attached hereto as Exhibit "A."

4.

Movants and Debtor entered into a Consent Judgment on the dispossessory filed by Movants on February 26, 2018, whereby Debtor agreed to pay to Movants back rent owed in the amount of \$6,000.00 on or before March 10, 2018 and \$2,000.00 on or before April 10, 2018, and Debtor agreed to vacate the premises known as 6657 Bankhead Highway no later than May 1, 2018. Additionally, Movants and Debtor agreed that any personal property located outside the fence area of the real property would be removed by March 1, 2018 and that any remaining personal property on March 2, 2018 could be removed by the Movants. A copy of the Judgment and Order is attached hereto as Exhibit "B."

5.

There has been a default in payments pursuant to the Consent Judgment which have come due since this case was filed. All post-petition payments have been missed.

6.

As of today's date, the current unpaid balance under the lease agreement is \$6,000.00, in accordance with the Consent Judgment.

7.

Because of the default and clear inability of Debtor to make all required payments, Movants are not adequately protected.

8.

Movant requests that the provisions of Fed. R. Bankr. P. 4001(a)(3) be waived.

WHEREFORE, Movant prays for an Order lifting the automatic stay, authorizing it to proceed with the exercise of dispossessory under its month-to-month lease and the Consent Judgment and appropriate state statutes. Movant also prays that Fed. R. Bankr. P. 4001(a)(3) be waived, and for such other and further relief as is just and equitable.

This 22nd day of March, 2018.

/s/ Victor J. Harrison

Victor J. Harrison, Georgia Bar No. 331799
Attorney for Movants
Harrison Law, LLC
3150 Golf Ridge Blvd., Suite 101
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Email: victorharrison@westgalaw.com

EXHIBIT

“A”

JSK Enterprises
2545 Cochran Ind Blvd
Douglasville, GA 30134

**NOTICE OF TERMINATION OF
MONTH TO MONTH TENANCY**

February 4, 2018

Darnell Richardson
Honda Imports Plus, LLC
6657 Bankhead Hwy
Douglasville, GA 30134
770 266-8774

The lease between Lessee and Lessor terminated on October 16, 2016. The Lessee, Darnell Richardson, has been on a month to month agreement since it expired. JSK Enterprises, Lessor is terminating the month to month as of the above date. Notice is hereby given to Darnell Richardson/Honda Imports Plus, LLC that you have 30 days to vacate the property located at 6657 Bankhead Hwy, Douglasville, GA 30134 and return said property to Lessor.

Certificate of Service

I Certify that on the date 4TH day of FEBRUARY, 2018, I served this notice to

Darnell Richardson,

- delivering it personally to the person in possession

- delivering to on the premises to a member of his/her family or an employee of suitable age and discretion with the request that it be delivered to the person in possession.

- first-class mail addressed to the person in possession.

Signed

Stephen L. Huestis

EXHIBIT

“B”

IN THE MAGISTRATE COURT OF DOUGLAS COUNTY
STATE OF GEORGIASTEPHEN E AUSTIN
JSK ENTERPRISES

Plaintiff

VS

FILED

FEB 26 2018

18MV00940
Case NumberSusan Conner, Clerk
Magistrate Court
Douglas County, GADARNELL RICHARDSON
DBA HONDA IMPORTS PLUS LLC
A/K/A HONDA IMPORTS PLUSS LLC
6657 BANKHEAD HWY
DOUGLASVILLE, GA 30134

Defendant

JUDGMENT AND ORDER

The above-styled case () being in default, or having come on regularly for trial before this court, and

() the Plaintiff/Defendant having moved for Dismissal of the case

() the Plaintiff/Defendant(s) having failed to appear/answer summons

() upon motion to strike Defendant(s) answer/for judgment on the pleadings/for directed verdict

(X) the Parties having consented hereto

() the case is dismissed with/without prejudice

() having heard the testimony and considered the evidence offered by the Parties in the case, including any counterclaim, it is ORDERED AND ADJUDGED that _____ do have and recover of _____ the sum of \$ _____ as principal,

\$ _____ as interest, \$ _____ as attorney's fees, \$25.00 fee to Douglas County

Sheriff's Office for execution of Writ of Possession, and all cost of Court, together with post judgment interest at the legal rate, to accrue hereafter.

(X) Writ of Possession shall issue instanter, (but shall not be executed prior to _____ days from today's date).

() FIFA shall issue immediately /after _____ upon request

(X) It is further ORDERED that the Defendant shall pay judgment to the Plaintiff as follows: \$6,000 with \$4,000 paid on or before 3/10/18 and \$2,000 on or before 4/10/18. Any property remaining on 5/1/18 not remaining on the premises will be considered abandoned by the Tenant. All property including vehicles that are outside of the fence along the Right of Way will be removed by Tenant on or before 3/1/18. Any property remaining on 3/1/18 until paid in full. Upon default of any one payment, a FIFA shall issue for the unpaid balance, can be removed by the Landlord/Plaintiff.

() and a Writ of Possession shall issue.

() In the event an appeal is taken for Landlord Tenant cases, the Defendant(s) shall pay \$ _____ into the registry of the Court through the Clerk's office on the _____ day of every month and each month hereafter, beginning _____, plus any judgment amount by

() _____, pursuant to O.C.G.A. § 44-7-56. Upon Defendant(s) failure to comply with this Order, a Writ of Possession shall issue without additional trial on such issue, upon an affidavit from Plaintiff to that effect, filed with the Clerk.

SO ORDERED, this 26th day of February 2018.

Plaintiff Victor S. Harrison Attorney for Plaintiff

Defendant

JAMES VALBRUN

ATTORNEY FOR DEF.

GA BAR 292353

Susan S. Camp
Chief Magistrate Judge

Certificate of Service

I certify that I am over the age of 18 and that on the date written below a copy of the foregoing Motion for Relief from the Automatic Stay and Notice of Hearing was served by email or by first class U.S. Mail, with adequate postage prepaid on the following persons or entities at the addresses stated:

The following parties have been served via U.S. Mail:

Darnell Richardson
PO Box 1004
Lithia Springs, Georgia 30122

Kyle A. Cooper
Suite 102
615 Colonial Park Dr.
Roswell, Georgia 30075

Dated: March 20, 2018

/s/ Victor J. Harrison
Victor J. Harrison, Georgia Bar No. 331799
Attorney for Movant
Harrison & Horan, P.C.
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Respondents.	:	

NOTICE OF HEARING

PLEASE TAKE NOTICE that the Movants named above have filed a Motion for Relief from the Automatic Stay and related papers with the Court seeking an Order Granting Relief from the Automatic Stay.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the Motion in Courtroom 1402, United States Courthouse, 75 Ted Turner Drive, Atlanta, Georgia, at 9:30am, on April 17, 2018.

Your rights may be affected by the Court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings, or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file

a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, Room 339, Federal Building, 600 East First Street, Rome, Georgia 30161. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the motion for relief from the automatic stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. If a final decision cannot be rendered by the Court within sixty (60) days of the date of the request, Movant waives the requirement that a final decision be issued within that period. Movant consents to the automatic stay remaining in effect until the Court decides otherwise.

This 22nd day of March, 2018.

/s/ Victor J. Harrison

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